IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 3058 OF 2007

Vivek Shetty..... ..... Petitioner.

Versus

Draupadi Dudhani & anr.. .... Respondents.

Ms.Lakshmi Murali for the Petitioner.
Mr. Charanjeet Chandrapal for the Respondents.

CORAM : B.H.MARLAPALLE, J.

DATED : 20TH APRIL, 2007.

P.C.:

Heard learned Counsel appearing for both the parties.

2. The respondents landlords had instituted the eviction proceedings by filing an application under Section 42 of the Maharashtra Rent Control Act, 1999, ("the Act" for short) and the said application came to be registered as Case No. 51 of 2006.

3. The present petitioner, who is the tenant and against whom the decree of eviction has been passed in the said proceedings, filed an application under Section 43(4)(b) of the said Act praying for leave to

defend the said application. The respondents owners opposed the said application and it came to be rejected by the Competent Authority (Rent Act), Konkan Division, Mumbai by his order dated 10th January, 2007 and on the same day the Competent Authority was pleased to allow the Eviction Application No. 51 of 2006 by a reasoned order. Aggrieved by both these orders, the petitioner filed a revision application under Section 44 of the Act before the Divisional Commissioner, Konkan Division, Mumbai and after hearing both the parties, the Additional Commissioner, Konkan Division was pleased to dismiss the revision vide his judgment and order dated 22nd March, 2007. Hence, this petition.

4. So far as the application seeking leave to defend filed by the petitioner is concerned, two main arguments were advanced, that there was no agreement of leave and licence in letter and spirit and in fact the intention between the parties were to create tenancy in favour of the petitioner. It was further stated that the agreements signed and registered as leave and licence agreements were under good faith and the petitioner had agreed for signing the said agreements after much persuasion and on the respondents assuring to execute the tenancy agreement.

5. The Competent Authority considered the respective contentions as well as the documents placed on record and noticed that the agreement for leave and licence was signed and registered for a period of eleven months and on expiry of the first agreement the second agreement was also executed and registered in March, 2006, though the period of licence was from 1st December, 2005 to 31st October, 2006. In the said agreement it was clearly stated that the premises i.e. Flat No. 317-C located in Karachi Co-operative Housing Society Limited were given on leave and licence basis and the licensor i.e. the present petitioner had paid an amount of Rs.1,25,000/- by way of security deposit. Though, it was contended by the landlords that the licence fee was fixed at Rs.16,000/- per month, the Competent Authority on assessment of the evidence has recorded a finding that the licence fee was Rs.9,000/- per month.

6. It was also noted that the petitioner had issued cheques for payment of licence fee and the said four cheques were dishonoured and criminal complaints under Section 138 of the Negotiable Instruments Act are pending against the petitioner before the Competent Court. The Competent Authority, however, noted that

on the last day of licence period i.e. 31st October, 2006 the Petitioner in the presence of two witnesses signed a letter addressed to the landlords stating that he was immediately vacating the suit premises and would handover the possession immediately to the landlords. However, on 1st November, 2006 the petitioner refused to vacate the premises and that is how he has remained in occupation of the suit premises.

7. On the application for leave to appeal the Competent Authority framed the following two issues and answered them in the negative:

(a) Whether there is triable issue of fact on law involved in the matter?

(b) Whether the respondent is entitled for leave to defend?

Section 43(4)(b) of the Act reads as under:

"43. Special procedure for disposal of applications.

(1) ....

(2) ....

(3) ....

(4)(a) .....

(b) The Competent Authority shall give to the tenant or licensee leave to contest the application, if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in Section 22 or 23 or 24;"

On perusal of the said provision, it is clear that leave to appeal is granted only when triable issues on facts and law are made out on the basis of which the tenant would be entitled to defend the eviction application. In the instant case, admittedly, two registered agreements for leave and licence were brought on record and each agreement was for a period of 11 months. On expiry of the first agreement, the second agreement was executed on 3rd March, 2006 and it was for the period from 1st December, 2005 to 31st October, 2006. The tenant was

a defaulter in payment of compensation to the extent of Rs.47,000/- as the cheques issued by him for the said amount had been dishonoured. On 28th October, 2006 the learned Advocate for the landlord had received two letters from the learned Advocate of the tenant and in one of the letters it was clearly stated, in presence of two witnesses, that the tenant would give quiet and peaceful possession of the suit premises to the applicant. In addition, there is letter dated 1st September, 2006 placed on record in Writ Petition No. 1223 of 2007 addressed on behalf of the petitioner-tenant by his learned Advocate Mr. Laxman P. Kandal and in para 2 of the said communication addressed to Shri Charanjeet Chandrapal the learned Advocate for the landlords, it is stated:

> "That it is fact that my client had entered in the leave and licence agreement with your clients and pursuant to the said leave and licence agreement my client was supposed to pay the amount towards compensation."

It is also pertinent to note that in the application filed for seeking leave to defend, the petitioner-tenant stated on oath in para 12 as under:

"I without admitting the claim of the licence, say that the Applicants are not entitled to recover the possession from me without refunding the amount of the security deposit received from me at the time of letting out the premises."

It is thus clear that the petitioner-tenant had admitted the leave and licence agreements and he was willing to handover the possession of the suit flat on refund of the security deposit by the landlords. When this application was being heard before the Competent Authority, the landlords offered the Demand Draft of Rs.1,25,000/- and called upon the petitioner to accept the same and vacate the suit premises. The Competent Authority has recorded that the petitioner - tenant refused to accept the said Demand Draft and turned down the offer. On these obtaining circumstances, the order passed by the Competent Authority in rejecting the application for leave to defend cannot be termed as perverse or grossly erroneous.

8. When the agreements for leave and licence were registered and the agreements very clearly stated about the relationship between the parties and that the suit flat was given for the residential use of the licensee and his family, by virtue of Sections 91 and

92 of the Indian Evidence Act, the tenant was precluded from alleging anything contrary to the terms and conditions of the said agreements. The contentions of the petitioner - tenant that he was using the suit premises as a guest house were, therefore, held to be in violation of the terms and conditions of the agreement. The tenant’s defence that the relationship between the parties was of tenancy and that leave and licence agreement was nominally executed, have also been discarded by the Competent authority. Explanation (b) below Section 24 of the Act clearly states that an agreement of licence in writing shall be conclusive evidence of the fact stated therein and therefore, the tenant is precluded from alleging anything contrary to the terms and conditions of the agreement executed and registered. the licence period, as per the second agreement, had expired on 31st October, 2006. The Competent Authority also referred to the letter dated 3rd August, 2006 of the Society, in which the suit flat is situated, and it referred to a complaint against the tenant regarding his rash and fast driving which caused inconvenience to the other residents in the building.

9. The revision authority considered the following

issues raised by the petitioner :

(a) By efflux of time and by action of the parties the petitioner had become the tenant of the suit premises and has been in use and occupation of it.

(b) He is in possession of the said premises without any written registered agreement and therefore the application is not maintainable.

(c) The agreement intended to create the right of tenancy in the suit premises and the term there in and the action of the parties determine that the nature of the said agreement was of the tenancy for the purposes and the term there in and the action of the parties determine that the nature of the said agreement was of the tenancy for the purpose of convenience leave and licence documents was created which otherwise intending to create tenancy rights.

(d) The possession of the suit premises was already handed over and thereafter the present applicant entered forcibly into the said premises when, issue of leave and licence ceased to exist.

10. On going through the reasoning set out by the Competent Authority, the Revisional Authority rejected all these contentions and recorded a finding that the relationship between the parties was that of licensor and licensee, the agreement was of leave and licence, and there was no substantive reasons to interfere with the order passed by the Competent Authority.

11. Thus both the Authorities below concurrently passed the decree of eviction on the following grounds:

(a) The licence period had expired and the relationship between the parties was that of licensor and licensee.

(b) The petitioner gave in writing to vacate the premises on 31st October, 2006 in the presence of two witnesses but refused to vacate the same on 1st November, 2006 and continued to occupy the premises unauthorizedly and as a trespasser.

(c) The petitioner was a defaulter in payment of licence fee in as much as four cheques issued by him were bounced and landlords have filed

criminal complaints under Section 138 of the Negotiable Instruments Act.

(d) The petitioner had offered to vacate the premises subject to refund of the entire deposit amount, before the Competent Authority.

(e) The petitioner's behaviour in the Society had become nuisance to the other members of the Society.

(f) The premises were given to him for his residential purposes and with specific clause to that effect in the agreement but the premises were used as commercial premises (guest house) for the business of event Management.

12. The reasoning given by both the authorities below does not suffer from any error. Hence, there is no case made out to interfere in the orders impugned in this petition under Article 227 of the Constitution. The petition, therefore, fails at the threshold and the same is hereby rejected summarily.

13. The learned Counsel for the petitioner sought time to vacate and handover peaceful possession of the

suit premises to the landlords. The petitioner is present in the Court and on instructions the learned Counsel for the petitioner stated that the petitioner will vacate the suit premises within one month from today. The learned Counsel for the respondent landlords has opposed the extension for a period of one month but fairly conceded that a period of two weeks could be given to the petitioner to vacate the premises. He also pointed out that the petitioner has not been staying in the suit premises and in fact the premises are being misused.

14. Be that as it may, it would be just and proper that a period of four weeks is given to the petitioner to vacate and handover peaceful possession of the suit premises to the landlord subject to the petitioner filing an undertaking to that effect with the Registry of this Court on or before 23rd April, 2007 and accordingly a period of four weeks is hereby granted and the petitioner is directed to file his undertaking with the Registry of this Court by 23rd April, 2007.

Sd/-

(B. H. MARLAPALLE, J.)